



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
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San José, California 95113
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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 28534**", the original copy of which is attached hereto, was passed for publication of title on the **28th day of April, 2009**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **12th day of May, 2009**, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO, NGUYEN,
OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: CHIRCO, CONSTANT.

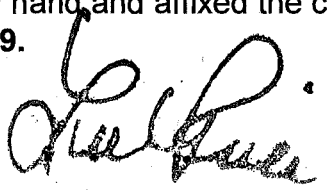
DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **June 12, 2009**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **14th day of May, 2009**.

(SEAL)



LEE PRICE, MMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28534

**AN ORDINANCE OF THE CITY OF SAN JOSE
REPEALING CHAPTER 6.30 OF TITLE 6 OF THE SAN
JOSE MUNICIPAL CODE AND AMENDING CHAPTER
6.54 OF TITLE 6 TO INCLUDE REGULATION OF
FLOWER STREET VENDORS, EXTEND THE HOURS
DURING WHICH APPROVED LOCATION PEDDLERS
CAN PEDDLE, AUTHORIZE THE CITY MANAGER TO
MAKE AND PROMULGATE TIME, PLACE AND MANNER
REGULATIONS REASONABLY NECESSARY TO
PROMOTE ECONOMIC GROWTH AND CREATE A MORE
VIBRANT DOWNTOWN, AND UPDATE DEFINITIONS TO
ENSURE CONSISTENCY OF TERMS WITHIN TITLE 6 OF
THE SAN JOSE MUNICIPAL CODE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 6.30 of Title 6 of the San José Municipal Code is hereby repealed.

SECTION 2. Chapter 6.54 of Title 6 of the San José Municipal Code is amended to read as follows:

**CHAPTER 6.54
PEDDLER PERMIT ORDINANCE**

**Part 1
Definitions**

6.54.010 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

6.54.020 Approved Location

"Approved location" means a fixed site designated by the Chief of Police as an approved site from which a peddler, operating from a mobile unit, may sell his or her products.

6.54.030 Director

"Director" means the City Manager, or such other person designated by the City Manager to administer this Chapter.

6.54.035 Downtown Street Vendors Program Area

"Downtown Street Vendors Program Area" means that area bounded by the following streets and portions of streets: to the north, San Fernando Street from Highway 87 to Almaden Avenue, then Julian Street from Terraine Street to 4th Street, then St. John Street, from 4th Street to 7th Street; to the south, Interstate 280, from Highway 87 to 4th Street, then San Fernando Avenue from 4th Street to 7th Street; to the west, Highway 87 from San Fernando Avenue to Interstate 280, then Almaden Avenue, from Julian to San Fernando Avenue ; and, to the east, 4th Street, from Julian to St. John Street, then 7th Street, from St. John Street to San Fernando Avenue, then 4th Street, from San Fernando to Interstate 280, except City Hall Plaza which is subject to the provisions of Chapter 13.23 of this Code and shall not be considered as part of the Downtown Street Vendors Program Area.

6.54.038 Licensee

"Licensee" means the holder of a Peddler employee license.

6.54.040 Mobile Unit

"Mobile Unit" means any vehicle, truck, trailer, cart, wagon, bicycle, dray, conveyance or structure on wheels, not firmly fixed to a permanent foundation, which is not required to have a license to operate issued by the California Department of Motor Vehicles.

6.54.050 Motor Vehicle

"Motor Vehicle" means any automobile, truck, trailer or other conveyance which is required to have a license to operate issued by the California Department of Motor Vehicles.

6.54.060 Peddler

"Peddler" means any person who participates in peddling.

6.54.070 Peddling

"Peddling" means either:

- A. Traveling by foot, Motor Vehicle, Mobile Unit or any other type of vehicle, from place to place, and selling or vending any goods, wares, merchandise, food, products, or any other thing or representation of value on any street, sidewalk, right-of-way, park or other public place; or
- B. Selling or vending any goods, wares, merchandise, food, products or any other thing or representation of value from a fixed location approved by the City on any street, sidewalk, right-of-way, park or other public place.

6.54.080 Peddler Business

"Peddler Business" means any of the following:

- A. A business engaged in Peddling; or
- B. A business engaged in supplying, providing, or selling goods, wares, merchandise, food, products, or any other thing or representation of value on consignment to be peddled by another person; or
- C. A business engaged in supplying, providing, or renting Mobile Units or Motor Vehicles for use by another person in Peddling.

6.54.085 Peddler Employee

"Peddler Employee" means any of those persons defined in Section 6.01.040 of this Code.

6.54.090 Permittee

"Permittee" means the holder of a Peddler business permit.

6.54.095 San José State University Campus Area

"San José State University Campus Area" means that area bounded by Fourth Street, San Fernando Avenue, Tenth Street and San Salvador Avenue.

Part 2
General Provisions

6.54.100 Peddler Categories

A. This Chapter shall regulate the conduct of the following categories of Peddling:

1. Pedestrian Peddlers;
2. Motor vehicle-based and Mobile Unit Peddlers;
3. Approved Location Peddlers;
4. Annual or special events Peddlers;
5. Arena Peddlers;
6. Flower Peddlers.

B. Ice cream trucks, unless otherwise specified, are regulated under Chapter 6.39 of the Code.

6.54.110 Peddler Business Permit Required

A. It shall be unlawful for a person to maintain, manage, operate, conduct, control, engage in or own a Peddler business that operates within the City unless the business is maintained and operated in strict compliance with a valid Peddler's business permit issued by the Chief of Police.

- B. A peddler business permit is a business permit for purposes of Chapter 6.02 of the Code.

6.54.120 Peddler Business Permittee Responsibility

The act or omission of any Permittee's partner, owner, associate, director, manager, officer, agent or employee is for all purposes the act or omission of the Permittee regulated by this Chapter.

6.54.130 Peddler Employee License Required

- A. It shall be unlawful for a person, other than the Permittee, to Peddle without having first obtained a Peddler employee license issued by the Chief of Police.
- B. It shall be unlawful for any Permittee, or any operator, manager, owner or employee of a Peddler business, to allow or tolerate any person who does not have a Peddler employee license from working for or under the direction of, or on behalf of, or as an agent of the Peddler business.
- C. For purposes of Peddling, a natural person holding a valid Peddler business permit is deemed to also have a Peddler employee license.

6.54.140 Approved Location Permit Required

It shall be unlawful for any person to peddle from a fixed location on any public street, sidewalk, or right-of-way, unless that person obtains an Approved Location permit from the Chief of Police as provided for in this Chapter.

Part 3
Operating Regulations And Permit And License Conditions

6.54.200 Conditions of Permit

- A. Each Peddler Business permit and Peddler employee license issued by the Chief of Police shall be subject to the terms and conditions set forth in this Part, as well as any other terms and conditions specifically set forth in the permit or license.
- B. The provisions of this Part shall constitute operating regulations. It shall be unlawful for any person permitted or licensed under this Chapter, or any person required to be permitted or licensed under this Chapter, whether such person is actually so permitted or licensed, to engage in Peddling in violation of these provisions.

6.54.205 Hours of Business

- A. Unless otherwise specifically excepted in this Chapter, no person shall peddle upon any street, sidewalk, right of way, park or other public place in the City between the hours of 7:00 p.m. or one-half hour after sunset, whichever comes first, and 10:00 a.m. of the following day.
- B. The provisions of this Section shall not apply to the sale of foodstuffs to employees of industrial establishments at or adjacent to such establishments, or to workers or employees at any construction job site, if the foodstuffs sold to such persons are sold for immediate consumption at such places.

6.54.210 ID Display Requirements

Each person who is engaged in Peddling shall, at all times while so engaged, wear in plain sight, on his or her person, a Peddler identification (ID) card provided by the Chief of Police and containing such information, including a suitable photograph, as the Chief of Police may require.

6.54.220 General Noise Requirements

- A. Unless otherwise specifically excepted in this Chapter, no Peddler shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device used for the production of sound between the hours of 7:00 p.m. or one-half hour after sunset, whichever comes first, and 10:00 a.m. of the following day.
- B. No Peddler shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device used for the production of sound in such a manner as to create a disturbance of the peace as that term is used in Chapter 10.16 of this Code.

6.54.230 Noise Restrictions -- Motor Vehicle-Based and Mobile Unit Peddlers

Unless otherwise specifically excepted in this Chapter, no Motor Vehicle-based Peddler or Mobile Unit Peddler shall use play, or caused to be used or played any amplifier, loudspeaker, or any other instrument or device used for the production of sound when the Motor Vehicle or Mobile Unit from which the Peddler is Peddling is stationary upon any street, sidewalk, right-of-way, park or other public place.

6.54.240 Parking Restrictions -- Motor Vehicle-Based and Mobile Unit Peddlers

- A. It shall be unlawful for any Motor Vehicle-based or Mobile Unit Peddler to:
1. Permit any Motor Vehicle or Mobile Unit from which Peddling is occurring to remain standing or stopped, for Peddling purposes, at any place on any public street, sidewalk, right-of-way, public place, or at any location within five hundred (500) feet of that place, for a total period of time exceeding fifteen (15) minutes within any two (2)-hour period.
 2. Make any stop, for the purpose of making any sale upon any public street, sidewalk, right-of-way, park, or other public place, within five hundred (500) feet, measured along the traveled way of any public street or streets, of any school property.
- B. Unless otherwise specifically excepted in this Chapter, it shall be unlawful for any Motor Vehicle-based or Mobile Unit Peddler to peddle from any Motor Vehicle or Mobile Unit upon any public street except from or at the side of such Motor Vehicle or Mobile Unit which is nearest to the curb of such street.
- C. The provisions of this Section shall not apply to the sale of foodstuffs to employees of industrial establishments at or adjacent to such establishments, or to workers or employees at any construction job site, if the foodstuffs sold to such persons are sold for immediate consumption at such places.

6.54.250 Congestion Restriction for Motor Vehicle-Based and Mobile Unit Peddlers

No Motor Vehicle-based or Mobile Unit Peddler shall stop to peddle from a Motor Vehicle or Mobile Unit within two hundred (200) feet of another Motor Vehicle-based or Mobile Unit Peddler that has already stopped to Peddle.

6.54.255 Effect of Approved Location Permit- No Property Interest Granted

An Approved Location permit grants the Permittee the privilege of occupying a particular portion of the public sidewalk for the purpose of conducting the approved Peddler Business. An approved location permit does not grant the Permittee any estate or other property right or interest to operate at the location for which the permit is issued and/or to operate at any location in the public street. Any person applying for an Approved Location permit should have no expectation that an approved location permit will be granted, nor that the Approved Location permit will continue once issued.

6.54.260 Approved Location Permit Terms and Conditions

An Approved Location permit to Peddle may be issued by the Chief of Police under the following terms and conditions:

- A. The person requesting an approved location permit shall comply with all the permit and license procedures set forth in Chapter 6.02.
- B. If more than one application is received at the same time for the same location not currently occupied by a Permittee, the successful applicant shall be drawn by lot.

- C. Each application for an Approved Location permit shall be accompanied by a site plan which shall specifically detail how and where the applicant proposes to set up the Mobile Unit from which the applicant intends to Peddle.
- D. If issued, an Approved Location permit shall grant only a license to use the sidewalk portion of the public street identified in the Approved Location permit.
- E. The Chief of Police shall make Approved Location permits subject to such other terms and conditions as the Chief of Police deems necessary to promote the public health, safety and welfare and to promote vehicular traffic safety and convenience and pedestrian safety and convenience.
- F. Permits shall be issued only for particular approved locations situated on the sidewalk portion of a public street.
- G. No Approved Location permit shall be issued for any location immediately adjacent to residentially zoned or used property, with the exception of residentially zoned or used property within the San José State University Campus Area and the Downtown Street Vendors Program Area.
- H. If an Approved Location permit is issued for an area located within the Downtown Street Vendors Program Area, the Approved Location permit may include an alternate Approved Location for the applicant to Peddle from during the time when the applicant is not able to Peddle from the original and primary approved location due to a Downtown Special Event, as defined in Chapter 6.55 of this Code.
- I. If an Approved Location permit is issued for an area located within the Downtown Street Vendors Program Area and the applicant desires to have an alternate

location approved as part of his or her Approved Location permit, the applicant must submit with his or her application a site plan for the alternate location.

- J. No Approved Location permit shall be issued to a peddler Peddling from a Motor Vehicle.
- K. No person shall Peddle from, at, or in conjunction with a Mobile Unit except at the Approved Location for which that person, or the business for which he or she is Peddling, has an Approved Location permit issued by the Chief of Police.
- L. No person shall Peddle from a Mobile Unit that exceeds the following dimensions: four (4) feet high, five (5) feet wide, six (6) feet long.
- M. No person shall use or have any movable or permanent stand, table, chair, ice chest or other ice container, equipment or device at any Approved Location other than the permitted Mobile Unit, one stool for his or her own use, and one trash/garbage container of no more than thirty (30) gallon capacity.
- N. Under no circumstances shall a person with an Approved Location permit block the free movement of pedestrians along the sidewalk.
- O. A person operating with an Approved Location permit at the Approved Location shall park or locate any Mobile Unit in such a way that the Mobile Unit is located directly within the area described in the permit under which he or she is Peddling, and in such a way as to use as little of the sidewalk as possible.
- P. Approved Location permits shall not be sold, assigned or transferred and any attempt to sell, assign or transfer, or any sale, assignment or transfer of, any Approved Location permit shall render the permit null and void.

- Q. An Approved Location permit shall cover the Permittee to whom the permit is issued and any of the Permittee's agents or employees that have obtained a valid Peddler employee license from the Chief of Police.
- R. Except as otherwise specifically provided in this Chapter, no person shall Peddle from an Approved Location between the hours of 7:00 p.m. or one-half hour after sunset, whichever comes first, and 6:00 a.m. of the following day ("hours of operation").
- S. No person Peddling from an Approved Location shall allow any Mobile Unit to remain at the Approved Location beyond the hours of operation permitted under this Section.
- T. No person Peddling from an Approved Location shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device used for the production of sound beyond the hours of operation permitted under this Section.
- U. No person Peddling from an Approved Location shall use, play or cause to be used or played any amplifier, loudspeaker, or any other instrument or device used for the production of sound in such a manner as to create a disturbance of the peace as that term is used in Chapter 10.16 of this Code.

6.54.265 Regulations For Approved Location Peddler Permits Issued for the Downtown Street Vendors Program Area – City Manager

- A. Consistent with the City's Downtown Strategy 2000 and the City's General Plan, the City Manager is hereby authorized to make and promulgate time, place and manner regulations that are reasonably necessary to promote economic growth and create a more vibrant Downtown for the Downtown Street Vendors Program Area. These regulations shall be in addition to the requirements set forth in this

Chapter. All Approved Location permits issued for the Downtown Street Vendors Program Area shall be subject to the provisions of this Chapter, unless different requirements are established in the regulations.

- B. All regulations established by the City Manager shall be set forth in specific regulations for Approved Location Peddlers in the Downtown Street Vendors Program Area which shall be adopted by the City Manager as follows:
1. Any proposed regulations shall be coordinated by the City Manager with the Chief of Police, the Director for the Department of Transportation, the Office of Economic Development, and the City Attorney.
 2. Any proposed regulations shall be posted on the City Clerk's website and made available for inspection and copying by the public at the Office of the City Clerk during normal business hours.
 3. A copy of any proposed regulations shall also be mailed to each holder of a permit or license issued under this Chapter.
 4. A thirty (30) day public comment period to receive comments on the proposed regulations shall commence on the date the notice of the proposed regulations is sent to those permitted or licensed under this Chapter. During the comment period, any person may submit written comments regarding the proposed regulations to the City Manager.
 5. After the close of the public comment period, the City Manager shall consider all reasonable public comments on the proposed regulations.
 6. After the City Manager has considered the comments, the City Manager shall approve the final regulations.

7. The regulations approved by the City Manager shall be contained in regulations for Approved Location Peddlers in the Downtown Street Vendors Program area which shall become final on the date notice of the regulations is sent to those permitted and licensed under this Chapter and the date the regulations are posted on the City Clerk's website.
 8. The notice of the regulations shall be accompanied by a brief written statement from the City Manager setting forth the reasons for the regulations.
- C. Any regulations adopted by the City Manager may be amended by following the procedure outlined in subsection B.

6.54.270 Insurance for Approved Location Peddlers

- A. Each Permittee who is an Approved Location Peddler, at his or her sole cost and expense, and during the entire term of his or her permit or any renewal thereof, shall obtain and maintain in full force and effect a commercial general liability insurance policy or other such policy as the Office of the Risk Manager shall require:
1. With minimum policy limits to be set by the Risk Manager;
 2. Issued by an admitted insurer or insurers as defined by the California Insurance Code; and
 3. Providing that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of the Peddler Business permit, without thirty (30) days written notice to the Risk

Manager prior to the effective date of such cancellation or prior to the reduction in coverage.

4. The City of San José shall be an additional named insured under the policy.
- B. Adequate proof of insurance shall be provided to the Risk Manager prior to the Permittee and his or her agents and employees engaging in Peddling at an Approved Location.

6.54.280 Exemption for Annual or Special Events

- A. Peddlers shall be exempt from the provisions of this Chapter when participating in an event under the following circumstances:
1. While such Peddlers are participating in an event subject to a:
 - a. Parade permit issued pursuant to Chapter 13.12 of the Code;
 - b. Street closure permit issued pursuant to Chapter 13.16 of the Code;
 - c. Paseo/plaza use permit issued pursuant to Chapter 13.22 of the Code;
 - d. Park entertainment or special use permit issued pursuant to Chapter 13.44 of the Code.
 2. While such Peddlers are participating in an event declared to be a Downtown Special Event pursuant to Chapter 6.55 of the Code.

- B. The sponsoring organization is authorized to choose participating Peddlers, issue space permits to such Peddlers, and charge a reasonable fee for such business participation.
- C. The exemption shall be for the duration of the event only.

6.54.290 Arena Peddling -- Prohibition Zone

- A. The "Arena Peddling Prohibition Zone" shall be the area bounded by the following streets and portions of streets:
 - 1. West San Fernando Street: the south side sidewalk of San Fernando Street from the intersection of the Peninsula Corridor Joint Powers Board Railroad right-of-way and San Fernando Street to the intersection of San Fernando Street and Almaden Boulevard.
 - 2. Almaden Boulevard and North Almaden Boulevard: the east sidewalk of Almaden Boulevard from the intersection of San Fernando Street and Almaden Boulevard north to the intersection of North Almaden Boulevard and West Julian Street.
 - 3. West Julian Street: the north side sidewalk of Julian Street from the intersection of North Almaden Boulevard and Julian Street to the intersection of Julian Street and the western side of the Peninsula Corridor Joint Powers Board Railroad right-of-way.
 - 4. Peninsula Corridor Joint Powers Board Railroad right-of-way: the western boundary of the Peninsula Corridor Joint Powers Board Railroad right-of-way from the intersection of Julian Street and the Peninsula Corridor Joint

Powers Board Railroad right-of-way to the intersection of the Peninsula Corridor Joint Powers Board Railroad right-of-way and San Fernando Street.

- B. The Arena Peddling Prohibition Zone shall include all public land and public rights-of-way up to the boundaries of the zone as described in subsection A. of this Section.

6.54.295 Arena Peddling -- Peddling Prohibition

No person shall Peddle within the designated Arena Peddling Prohibition Zone.

Part 4

Permits And Licenses

6.54.300 Permit and License Procedures

- A. The procedures set forth in Chapter 6.02 shall govern the application for, investigation, approval, denial, suspension, revocation, and renewal of any Peddler Business permit and Peddler employee license issued pursuant to this Chapter, except as specifically provided in this Part.
- B. All the application procedures set out in Section 6.02.050 shall strictly apply to each applicant for a Peddler Business permit and Peddler employee license.

6.54.310 Permit and License Fees

Fees for the Peddler Business permit, the Approved Location permit, and the Peddler employee license applications and renewal applications shall be as set forth in the schedule of fees established by Council resolution. Veterans qualifying for the

exemption, as set forth in California Business and Professions Code Sections 16001 and 16001.5, shall be exempt from payment of such fees.

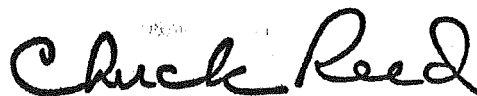
PASSED FOR PUBLICATION of title this 28th day of April, 2009, by the following vote:

AYES: CAMPOS, CHU, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

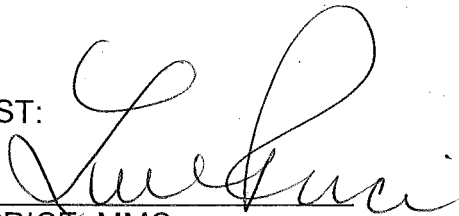
ABSENT: CHIRCO, CONSTANT.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk